No. 109.
Reply Br. of Clapp & Sullivan for D. E.

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Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, Executor, &c., Plaintiff in Error,

vs.

WASHINGTON COUNTY, MINNESOTA.

REPLY BRIEF FOR THE DEFENDANT IN ERROR.

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IN THE

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vs.

WASHINGTON COUNTY, DEFENDANT IN ERROR.

REPLY BRIEF FOR DEFENDANT IN ERROR.

Answering the points made in the reply brief of plaintiff in error, we suggest:

1. The judgment in this proceeding is not a personal judgment, either in form or effect. It is simply an allowance of the claim for taxes against the estate of Sophia M. Bristol and only binds the assets of such estate within the jurisdiction of the probate court of Ramsey county, Minnesota, and does not bind the estate elsewhere, nor the heirs, devisees, or executors in New York.

Johnson *vs.* Powers, 139 U. S., 156.
Stacy *vs.* Thrasher, 6 How., U. S., 44.

2. The substantial effect of the allowance of the claim for taxes in this case is to subject the property of the estate of Sophia M. Bristol within the jurisdiction of the probate court of Ramsey county to the payment of such claim in much the same manner as if the claim were enforced as a lien in a direct proceeding for that purpose. In effect the claim becomes a lien on the property of the estate and in the nature of things cannot be a personal judgment against any person.

That personal-property taxes in Minnesota are a lien upon all the property of the owner within Minnesota was directly determined by the United States circuit court of appeals in the case of State of Minnesota *vs.* Central Trust Co., 94 Fed., 244.

In this case the question of the power of a State to provide that personal-property taxes should be a personal claim against the owner is not necessarily involved. Our supreme court has held *In re* Jefferson, 35 Minn., 215, that such claims could be proved and allowed against the estate of deceased persons; but to hold that a State has not such power might, and we think inevitably would, tend to seriously hinder and embarrass the State in the collection of its revenue, and would open the door for evasion and fraud. Property may be and is owned and business conducted by one person in many different States, and is subject to be and is changed in form, removed, sold, consumed, and sometimes destroyed. When subject to taxation and taxed, of what avail is the power of taxation if the State has no power to enforce the tax by such remedies as will make the collection reasonably safe and certain? Shall the State be limited in remedies for collecting taxes, except in the requirement that due process of law be observed? We think no other limit has ever been placed upon the powers of a State in this respect.

So the form of action or proceeding by which the State enforces the tax is not important. The State may provide for an action on the case for defeating a tax lien or an action

to enforce a lien against property or by filing its claim against an estate, so long as due process of law is observed in the proceeding; and it is entirely within the province of the State to determine the form and scope of all remedies for the collection of taxes as well as in other actions or proceedings. Plaintiff in error apparently concedes the right of the State to hold the owner personally liable where property taxed is fraudulently or unlawfully withdrawn from the State to the value of the taxed property, so that the question is resolved to a mere question of form of remedy or proceeding over which the State has full power.

Plaintiff in error cites the case of a non-resident selling personal property *subject* to taxes, and propounds the question: "Does he remain subject to personal suit for the taxes?" By way of answer we suggest it is hardly competent for persons to shift their obligations for taxes already assessed by means of contracts with other persons so as to affect the rights or remedies of the State.

3. That the laws of Minnesota provide for the taxation of the property in question there can be no dispute, and whether designated as credits or otherwise is not material.

In re Jefferson, 35 Minn., 215.

In substance the tax laws of Minnesota and of Louisiana relating to this kind of property are the same, so that since the decision in New Orleans *vs.* Stempel, 175 U. S., 309, the only question remaining in the case at bar is: Did the mere removal of the notes from Stillwater to New York for temporary purposes (they being returned from time to time), under the circumstances set forth in the statement of facts, defeat the right of the State to tax the property, the credits evidenced by the notes? Was it competent for the owner of this property clearly subject to taxation to defeat the tax by a mere temporary removal of the notes? From the history of the property and business, from the tax litigation

then pending, from the fact that no excuse or reason appears for the removel of the notes, from the fact that the business continued in all other respects as before; that the notes were made and made payable at Stillwater, and returned there from time to time on call of the agents whenever required for any purpose, it is evident that the removal of the notes was only an attempt to evade taxation. This is a fair inference from the record.

The effect of the introduction in evidence in this case of the tax-lists mentioned in the stipulation of facts (Record, pp. 47, 48) was *prima facie* to establish the validity of the taxes sought to be recovered under the rule of evidence announced.

In re Jefferson, 35 Minn., 215.

4. Thereupon the burden was cast upon plaintiff in error to establish clearly that the property was not subject to taxation, and we think this requires him to satisfy the court that the removal of the notes in the manner and under the circumstances shown was not to evade taxation, but for some *bona fide* purpose and to satisfy the court that all the facts exist which he claims should exempt the property from taxation.

5. It was undoubtedly competent for the State to have provided that taxes of the character in question should be a lien upon the property and to have provided other and, perhaps, more adequate remedies than already provided, but that it has not done so is not material to this argument; neither is it any measure or indication of the limit of the power of the State in respect to providing such remedies.

6. Where the owner of property entrusts it to an agent, with direction to invest it in business in another State, with full power and authority to control such property and invest, collect, and reinvest it at discretion, the principal

being liable for all the acts and contracts of the agent within the scope of the business authorized as much as if there personally acting for himself instead of through another, why should he not also be liable to the State for the just taxes levied by the State in respect to the property? By his own voluntary act an owner of intangible property may himself, by a long-continued course of business, by permanently attaching the property to the person of his agent, by requiring it to be paid in another State to his agent, by clothing his agent with all the power he himself has over the property, give it a home, a situs, apart from his own domicile. Washington county was certainly the business situs, and why not also the situs of this property for the purpose of taxation?

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